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In The
Supreme Court of the United States

MARY HALLMAN
Executrix for the Estate of Charles Clifton Walters
Petitioner

V

LEE COUNTY, MISSISSIPPI

Respondents

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Mary Hallman
P.O. Box 249
Belden, Mississippi 38826
662-844-0014
In Propria Persona

QUESTIONS PRESENTED

May a Federal District Judge grant Summary Judgment for the Defendant when the Plaintiff is under Federal Magistrate's written instruction to provide copies of tape recordings/discovery; proving the complaint without violating FRCP 26-37, Anderson v Liberty Lobby 477 US 242, Cellotex v Catrett 477 US 477?

PARTIES TO PROCEEDING

The plaintiff and defendants, et al to this proceeding are named in the caption and in Appendix 1, 2,3,4,5.

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1) Federal District Court for the Northern District of Mississippi - filed 7 Aug 2003

2) 5th Circuit Court of Appeals

Non-published- No precedence – filed 25 Mar 2004

4) 5th Circuit Court of Appeals

Rehear Denied – filed 21 Apr 2004

JURISDICTION

Petitioners claims were dismissed pursuant FRCP 56 dismissing Federal and State law claims with prejudice to Lee County Mississippi by the Federal District Court on 7 Aug 2003. On appeal, the 5th Circuit Court of Appeals affirmed the District Courts dismissal pursuant to FRCP 56 by Order dated 25 Mar 2004. Petition for Rehear was denied on 21 Apr 2004. The jurisdiction of this Court is invoked pursuant to United States Constitution Art III Section 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Constitutions

United States Constitution Article 1, Section 9 (v)

United States Constitution Article III, Section 2 (iv) (v)

Mississippi Constitution Art 3 Sec 21 (v)

Statutes

FRCP 26-27 (i)

FRCP 56 (iv) 4, 5

Federal Rules of Civil Procedure

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TABLE OF AUTHORITIES

Federal Case Law

Anderson v. Liberty Lobby, 477 US 242 (i) 4, 5

Canizaid v. Mobile Corp 655 S 2d. 25-28 (MS 1995) 4

Cellotex v. Catrett, 477 US 317 (i) 4,5,6

Johnson v. City of Cleveland 2002 CA-01687 4

PETITION FOR WRIT OF CERTIORARI

Petitioner Mary Hallman prays that a Writ of Certiorari issue to review the actions of the Fifth Circuit Court of Appeals and United States District Court for the Northern District of Mississippi whose judgments and actions in dismissing Petitioners claims departed greatly from established judicial precedent.

STATEMENT OF THE CASE

This case arises from the warrantless, without probable cause arrest and imprisonment of Charles Clifton Walters, now deceased. Following a two year incarceration riddled with due process violations, cruel and inhumane treatment to include forced homosexual conduct by government actors and the conspiracy by state actors to frame the 5th grade educated Walters. Walters was found NOT GUILTY by jury trial.

However during this period, Mary Hallman, next friend, never befriended Walters, gathering written and tape recorded evidence of state judges, district attorneys, law enforcement officials and grand jurors which revealed, all knew Walters was not guilty of the crime, but as in the words of one grand juror, using Walters for fish bait. Walters subsequently filed complaint in the US District Court for the Northern District of Mississippi (Aberdeen) against Lee County for the acts of its final policymakers.

Walters died a premature death as a result of lack of health treatment while incarcerated, leaving right to Mary Hallman by Last Will and Testament to pursue his claims, in his last effort on earth to prevent further like conduct against others. Hallman was substituted by order with telephonic case management, case management plan/order and final pretrial conference issued.

Per Local Rule, pre-core discovery was provided itemizing witnesses and tape recordings to include content. Interrogatories and production request were served with partial response. Motion to Compel was filed by Hallman with Lee County filing Motion for Summary Judgment. While under Federal Magistrate written instruction and time deadline to provide copies of the tape recordings/discovery, the Federal District Judge abruptly granted Lee County Summary Judgment without hearing, reviewing the evidence identified in the record (tape recordings/discovery, interrogatories, productions) with prejudice as to both the Federal and State Law claims. Appeal was perfected to the US Court of Appeals for the 5th Circuit, whom did affirm the District Courts Judgment. On rehear, the 5th Circuit modified its order to be WITHOUT PREJUDICE as to the state law claims. Writ of Certiorari to this Court now timely follows.

ARGUMENT

This Court has a long held precedent concerning Summary Judgment; (1) Discovery may not be pending (2) Court to review all pleadings and evidence (3) Facts may not be susceptible to more than one interpretation. Celotex v Catrett 477 US 317, Anderson v Liberty Lobby 477 US 242, FRCP 56 to which Mississippi has adopted Johnson v City of Cleveland NO 2001 CA-01687-SCT citing Canizard v Mobile Corp 655 So 2d 25, 28 (Miss 1995)

(1) Discovery Pending

The record is clear discovery was pending ie: Motion to Compel and Federal Magistrate order to provide tape recordings/discovery,

(2) Court to review all pleadings and evidence

The record is clear that the Federal District Judge did not review the pleadings and evidence that was identified in pre-core discovery, Notice of

Interrogatories and Admissions, and tape recordings/discovery to be provided before a date yet to occur. NO HEARING WAS HELD, only the Notice of Service of Interrogatories and Productions were in the record per rule and the tape recordings/discovery were being prepared.

(3) Facts May not be susceptible to more than one interpretation. Lee County offered two affidavits which placed one person's word against another's (open to more than one interpretation) which may only be determined by the trier of fact. FRCP 56, Celotex v. Catrett 477 US 317, Anderson v Liberty Lobby 477 US 242.

REASONS FOR GRANTING THE WRIT

This case exemplifies the need of this Court's supervisory powers to reinforce its inherent authority to promulgate the Federal Rules of Court (FRCP 56 and issue controlling stare decis decisions (Anderson,

Celotex) among its inferior Federal and State Courts, thereby providing for constitutional fair and impartial administration of justice. While it is distasteful to acknowledge, the lower courts acted in a manner inconsistent with superior authority to prevent tape recordings of state judges, prosecutors, law enforcement and grand jurors preventing Walters complaint from surfacing, constitutional equal justice, due process, and right of remedy require this Court to uphold its long held precedents.

CONCLUSION

Charles Clifton Walters endured over two years of what this Court has long ruled to be unlawful and civilly actionable. His next friend, Mary Hallman, did not abandoned him and has suffered similar acts against her person by government actors in an attempt to dissuade

her from pursuing Walters last wish on earth. If a 5th grade educated man and next friend can endure years to take action that will prevent others from enduring the same acts complained of, this Court should take its day to grant Writ of Certiorari and rule expeditiously on the briefs submitted to the lower courts, returning this case to the District Court with appointment of a competent, fair and impartial Judge for discovery completion and eventual trial, if it is to uphold its oath and constitution.

Respectfully submitted without prejudice this the 19th day of July 2004.

Mary Hallman

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Appendix 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MARY HALLMAN, Executrix of
The Estate if Charles C. Walters **PLAINTIFF**

Vs. **No. 1:01CV455-D-D**

LEE COUNTY, MISSISSIPPI **DEFENDANT**

OPINION GRANTING MOTION FOR SUMMARY JUDGEMENT

Presently before the court is the Defendant's motion for summary judgment. Upon due consideration, the court finds that the motion should be granted and the Plaintiff's claims dismissed with prejudice.

A. Factual and Procedural Background

The original Plaintiff, Charles C. Walters, was arrested in August of 1998 and charged with the murder of Pamela Reed and her infant son Brandon Gliatta. Walters was indicted for capital murder by a Lee County Grand Jury and was held without bail awaiting trial. Walters was subsequently acquitted after a trial by jury. Thereafter, on November 27, 2001, Walters filed this complaint pursuant to 42 U.S.C. § 1983. Walters died in October of 2002, and Mary Hallman, who was listed in Walters' will as his sole beneficiary, was granted leave of court to substitute herself as the Plaintiff in this cause.

The Plaintiff's complaint asserts claims under Section 1983 for inter alia, Walters' false arrest and improper treatment during his incarceration. The complaint seeks both compensatory and punitive damages. The Defendant has now filed a motion for summary judgment, seeking judgment as a matter of law as to the Plaintiff's pending claims.

B. Summary Judgment Standard

A party is entitled to summary judgment "if the pleadings, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Cov. P. 56©. On a motion for summary judgment, the movant has the initial burden of showing the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317,325, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). Under Rule 56 (e) of the Federal Rules of Civil Procedure, the burden then shifts to the non-movant to go beyond the pleadings and "by . . . affidavits, or by the depositions, answers to interrogatories, and admissions, on file, designate specific facts showing that there is a genuine issue for trial." Celotex Corp. 477 U.S. at 324. The burden is not discharged by mere allegations or denials. Fed. R. Civ. P. 56(e).

While all legitimate factual inferences must be viewed in the light most favorable to the non-movant, Rule 56(c) mandates the entry of summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at

trial." Anderson v. Liberty Lobby Inc. 477 U.S, 242, 255, 106 S. Ct. 2505, 2513, 91 L. Ed. 2d 202 (1986); Celotex Corp, 477, U.S. at 322. Before finding that no genuine issue for trial exists, the court must first be satisfied that no reasonable trier of fact could find for the non-movant. Matsushita Elec. Indus. V. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356, 89 L. Ed. 538 (1986).

(1) Discussion

1. General Principles

Local government bodies, such as the Defendant, may be sued for constitutional violations that were committed pursuant to a governmental policy or custom even though the policy or custom has never received formal approval through the local government body's official decision-making channels. Monel v. Department of Social Services, 436 U.S. 658, 690-91, 98 S. Ct. 2018, 2035, 56 L. Ed. 2d 611 (1978); see Grabowski v. Jackson County Pub. Defenders Office, 79 F. 3d 478, 479 (5th Cir 1996) (en banc) (holding that municipalities may be held liable for acts which violate citizens' constitutional rights if alleged harmful actions from policy, custom, or practice that evinced objective indifferences to citizens' constitutional rights). This "policy or custom" may also be created by those whose "edicts or acts" may fairly be said to represent official policy. Monell, 436 U.S. at 694. But, only those municipal officials who have "final policymaking authority" may subject the government to Section 1983 liability by their edicts or acts. Fembaur v. City of Cincinnati, 475 U.S. 469, 479-80, S. Ct. 1292, 1298-99, 89 L. Ed. 2d 452 (1986); City of St. Louis v.

Praprotnik, 485 U.S. 112, 123, 108 S. Ct. 915, 924, 99 L. Ed 2d 107 (1988).

Here, the Plaintiff has not provided the court any evidence whatsoever indicating that the Defendant had any official or non-official policy evincing objective deliberate indifference to the constitutional rights of criminal suspects or pre-trail detainees, nor is there any evidence before the court that suggests that the edicts or acts of any Lee County official who has final policymaking authority did so. In fact, the Plaintiff's sole concrete allegation is this regard is the complaint's conclusory assertion that the Defendant failed to provide proper training to it law enforcement officers regarding lawful arrest procedures. In connection with that assertion, the Plaintiff states that Lee County's inadequate training of its law enforcement officers regarding lawful arrest procedures renders the County liable under 42 U.S.C. § 1983 for the alleged violations of Walters' constitutional rights.

(2) Failure to Provide Proper Training

The Supreme Court has established two fundamental requirements for holding a local government body liable under 42 U.S.C. § 1983 for inadequate training policies:

(3) that the body's enactment of an inadequate training policy (or failure to enact any policy whatsoever) reflected "deliberate indifference" to the constitutional rights of its citizens; and

(4) that the body's inadequate training policy, or lack of any policy, was the "moving force" behind the subject constitutional violation.

City of Canton v. Harris, 489 U.S. 378, 388-89, 109 S. Ct. 1197, 1204-05, 103 L. Ed. 2d 412 (1989); Monell, 436 U.S. at 694; Snyder v. Trepagnier, 142 F.3d 791, 795 (5th Cir. 1998).

The Fifth Circuit has held that proof of a single incident ordinarily is sufficient to hold a local government body liable for inadequate training. Snyder, 142 F.3d at 798; Rodniguez v. Avita, 871 F. 2d 552, 554-55 (5th Cir. 1989). Rather, to establish liability, a plaintiff must demonstrate "at least a pattern of similar incidents in which the citizens were injured . . ." Rodriguez, 871 F.2d at 554-55.

The Plaintiff here has simply not offered sufficient evidence to overcome the Defendant's motion for summary judgment. Instead, the Plaintiff attempts to rely solely on the complaint's conclusory assertion, made without any evidentiary support, that "(t)he failure of the Defendant Lee County, Mississippi, to provide training and supervision regarding the lawful arrest procedures for its agents acting under color of law amount to deliberate indifferences to the rights of persons within the Lee County area." See Complaint at ¶ 2. Such, "mere allegations or denials" of this sort are clearly insufficient to adequately oppose a motion for summary judgment. See Fed. R. Civ. P. 56(e); Hawking v. Ford Motor Credit Co., 210 F.3d 540, 545 (5th Cir. 2000). Instead, as previously noted, a party facing a summary judgment motion must "go beyond the pleadings and by . . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial,'" Celotex Corp., 477 U.S. at 324. The Plaintiff has failed to do so in this case. Moreover, the Plaintiff has

offered no evidence whatsoever regarding a pattern of similar incidents, as required by the Fifth Circuit to hold a local governmental body liable for inadequate training. Rodriguez, 871, F.2d at 554-55.

Based on the above authorities and the submissions presently before the court, this court finds that dismissal of the Plaintiff's claims against the Defendant is appropriate; no genuine issue of material fact exist and the Defendant is entitled to judgment as a matter of law.

D. Conclusion

In sum, the Defendant's motion for summary judgment will be granted. The Defendant has shown that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law on all of the Plaintiff's claims.

A separate order in accordance with this opinion shall issue this day.

This the 7th day of August, 2003.

---s---
Glen H. Davidson
Chief Judge

Appendix 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MARY HALLMAN, Executrix of
The Estate if Charles C. Walters **PLAINTIFF**

Vs. **No. 1:01CV455-D-D**

LEE COUNTY, MISSISSIPPI **DEFENDANT**

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Pursuant to an opinion issued this day, it is hereby ORDERED that

(1) the Defendant's motion for summary judgment (docket entry 18) is GRANTED;

(2) the Plaintiff's claims are DISMISSED WITH PREJUDICE; and

(3) this case is CLOSED.

All memoranda, depositions, declarations and other materials considered by the court in ruling on this motion are hereby incorporated into and made a part of the record in this action.

SO ORDERED, this the 7th day of August, 2003.

---s---
Glen H. Davidson
Chief Judge

Appendix 3

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60717
Summary Calendar

MARY HALLMAN, Executrix of the
Estate of Charles Clifton Walters, deceased,

Plaintiff-Appellant,

versus

LEE COUNTY, MISSISSIPPI,

Defendant- Appellee,

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1:01 –CV-455

Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Mary Hallman, as executrix of the estate of Charles Clifton Walters appeals the summary – judgment dismissal of Walters' 42 U.S.C. § 1983 complaint, alleging claims of wrongful arrest, denial of Miranda rights, fraudulent indictment, wrongful incarceration, malicious prosecution, denial of medical care, physical abuse, and state law claims for defamation, invasion of privacy, and negligent and/or intentional infliction of emotional distress. The allegations arose out of the arrest and indictment

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* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

of Walters for murder and his incarceration pending trial. His state court criminal trial or the murder charges resulted in an acquittal. Walters' complaint alleged that the County was directly liable and responsible for the acts of its agents because the County failed to (1) adequately train and/or supervise its agents and (2) enforce and/or ensure that the laws of the United States and the State of Mississippi were being enforced.

Hallman first avers that the district court erred in granting summary judgment in favor of the County before discovery was completed. Hallman did not seek a continuance of the motion for summary judgment on the basis that additional discovery was needed pursuant to Fed. R. civ. P. 56(f). Moreover, Hallman has failed to show that additional discovery was necessary to establish

any issue of material fact which would have precluded summary judgment. International Shortstop, Inc. v. Rally's Inc., 939 F.2d 1257, 1266, (5th Cir. 1991).

Hallman does not specifically argue that the district court erred in granting summary judgment on her failure-to train/ supervise claim. Accordingly, the claim is deemed abandoned on appeal. Yohev v. Collins, 985 F. 2d 222, 224-25 (5th Cir. 1993).

Because there was no genuine issue of material fact, only the conclusional allegations, that the County had in place any official or non-official policy evidencing objective deliberate indifference to the constitutional rights of criminal suspects or pre-trial detainees, the district court did not err in granting the County's motion for summary judgment. See Anderson vs. Liberty Lobby, Inc., 477 U.S. 242,248 (1985).

The district court also properly refused to exercise jurisdiction over the state law claims. 28 U.S/C. § 1367 (c) (3); Rhyne vs. Henderson County, 973 F.2d 386, 395 (5th Cir. 1992). However, the judgment of the district court is amended to dismiss the state law claims without prejudice. See Hamill v. Wright, 870 F.2d 1030, 1038 (5th Cir. 1989) (modifying dismissal of state law claim to be without prejudice, except as to filing in federal court). The judgment is MODIFIED to be without prejudice as to the state law claims. As so modified, the judgment is AFFIRMED.

MODIFIED IN PART AND AFFIRMED AS MODIFIED.

Appendix 4

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60717
Summary Calendar

D.C. Docket No. 1:01-CV-455

MARY HALLMAN, Executrix of the
Estate of Charles Clifton Walters, deceased,

Plaintiff-Appellant,

v.

LEE COUNTY, MISSISSIPPI,

Defendant- Appellee,

Appeal from the United States District Court for the Northern District of Mississippi, Aberdeen.

Before JONES, BENAVIDES, AND CLEMENT, Curcuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed and the judgment is modified to be without prejudice as to the state law claims.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendant-appellee the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE;

OP-S-J-1

Appendix 5

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-60717
Summary Calendar

D.C. Docket No. 1:01-CV-455

MARY HALLMAN, Executrix of the Estate of Charles Clifton Walters, deceased,

Plaintiff-Appellant,

v.

LEE COUNTY, MISSISSIPPI,

Defendant- Appellee,

Appeal from the United States District Court for the Northern District of Mississippi, Aberdeen

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ON PETITION OFR REHEARING EN BANC

(Opinion March 25, 2004, 5 Cir., _____, _____, F.3d _____)

Before Judges JONES, BENAVIDES, AND CLEMENT, Circuit Judge,

PER CURIAM:
(X) Treating the Petition for Rehearing En Banc as a Petition for Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court requested that the court be polled on Rehearing En Banc (Fed. R. App. And 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

( ) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service not having voted in favor (Fed. R. App. P. and 5th Cir. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

----cannot read signature-----

United States Circuit Judge

REHG-6a